THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No. 26965 of 2005

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Dated: 25.01.2006

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Between:

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Sneha Mahila Group, rep., by its President,

Smt. Chava Sumathi W/o Verabhadram,

R/o Andukur village, Krosur Mandal,

Guntur District.

... PETITIONER

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And:

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The Mandal Revenue Officer, Krosur,

Guntur District and others.

...**Respondents**

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No. 26965 of 2005

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ORDER:

The petitioner was identified as an Implementing Agency for providing mid-day meals to the children of Mandal Parishad Upper Primary School, Andukuru Village

of Guntur District. The Mandal Revenue Officer, Krosur, first respondent herein, within whose jurisdiction the school is situated, issued the proceedings, dated 07.03.2005, removing the petitioner and two other agencies. The basis for removal is that the Revenue Divisional Officer, Guntur, second respondent herein, is said to have directed the first respondent to remove the implementing agencies on the ground that they have failed to supply eggs on Wednesdays.

A further direction is said to have been issued to appoint other agencies in their place. Petitioner approached by this Court by filing W.P.No. 4869 of 2005, and an interim order was granted on 11.03.2005. The writ petition was ultimately disposed of on 28.06.2005 leaving it open to the petitioner to approach the third respondent, by way of appeal.

The third respondent passed an order, dated 17.11.2005, upholding the order passed by the first respondent and appointing another agency. The same is challenged in this writ petition.

Learned counsel for the petitioner submits that the third respondent issued a notice, fixing the date of hearing as 17.11.2005, and the petitioner attended the office of the third respondent together with her counsel on that day. It is stated that the third respondent was not in the office, and on 18.11.2005 when the counsel for the petitioner went to the office of the third respondent to know the next date of hearing, he was informed that on the previous day itself the third respondent called for the file at 8.00 P.M. The third respondent is also said to have observed that learned counsel can make any submissions, whatever he wants. It is urged that the impugned order is in utter violation of principles of natural justice, and that the order passed by the first respondent is untenable, for more reasons, than one.

Learned Government Pleader for School Education submits that the third respondent has undertaken extensive discussion of the matter and stated valid reasons in support of his conclusions. He contends that the petitioner violated the terms and conditions of the agency, and the impugned action was taken to protect the interests of the school children.

Sri K.Suresh Reddy, learned counsel for the fourth respondent, submits that the orders passed by respondents 1 and 3 are based upon the specific findings recorded by the concerned authorities, and no interference is warranted with them.

At the stage of admission of W.P.No. 4869 of 2005, this Court noticed that the first respondent has taken several inconsistent stands and actions, vis-à-vis the agency of the petitioner. While disposing of the said writ petition, this Court directed the petitioner to avail the remedy of appeal before the third respondent, with the fond hope that the matter would be dealt with in accordance with the relevant provisions of law.

The petitioner has categorically stated in its affidavit that the third respondent did not attend the office during the working hours on 17.11.2005. The relevant portion reads as under:

> "It is submitted that on 17.11.2005 P.M the counsel for the appellant attended the office of the 3rd respondent for hearing of the appeal. But the 3rd respondent is not in the office. The counsel for the appellant waited there till 7.00 P.M., and at that time the staff of the 3rd respondent informed the counsel that the 3rd respondent will not come to the office. On 18.11.2005, the counsel for the appellant approached the office of the 3rd respondent to know the next date of hearing. It is learnt to the counsel that at 8.00 P.M., on 17.11.2005, the 3rd respondent instructed the staff to send the file relating this appeal to his residence and passed orders. Then, the counsel approached the 3rd respondent to now the fact. The 3rd respondent instructed the counsel to submit whatever he want to submit at that moment."

This portion of the pleading is not contradicted by the respondents. It would have been a different case altogether, had the third respondent passed an order subsequent to 18.11.2005, duly taking into account the submissions that might have been made on behalf of the petitioner, despite the fact that the petitioner did not attend his office on 17.11.2005. The impugned order discloses that it was passed on 17.11.2005. The third respondent made an observation to the effect that the petitioner did not avail the opportunity of making its representation. When the third

respondent was not in his office on 17.11.2005, the question of the petitioner availing the opportunity, does not arise. In all fairness, the petitioner stated that the third respondent heard it on 18.11.2005. However, this hearing was after the order was passed. The third respondent has reduced the entire process of hearing, to an empty formality. This was never in the contemplation of this Court when it directed the petitioner to approach the third respondent.

In the ordinary course of things, this Court would have remanded the matter to the third respondent, for fresh consideration, after setting aside the order, dated 17.11.2005. The fact, however, remains that the petitioner is a self help group of women from a village, and it has already been subjected to various proceedings in the matter of operating a small agency. The root cause, for these proceedings, is the order, dated 07.03.2005, passed by the first respondent. The only basis for the first respondent to have the replace of the petitioner with the fourth respondent is as under:

> " In the reference 1st cited, it is reported to the Revenue Divisional Officer, Gurtur, that in the enquiry it is revealed that in the schools of Gadevaripalem, Hussanabad, Andukur villages of Krosur Mandal boiled eggs were not supplied. In the reference 2nd cited, the Revenue Divisional Officer instructed to remove the Implementing Agencies who failed to supply eggs on Wednesday and appoint others in their place."

It does not disclose that any notice has been issued to the petitioner. Therefore, the order dated 07.03.2005, constituted a typical case, and suffers from more infirmities, than one. Firstly, it is passed on the directions issued by a superior authority. Way back in the year 1952, the Supreme Court, in its judgment in ***Commissioner of Police Vs Gordhan Das***, held that an authority, conferred with the power under a statute, cannot surrender the same to the superior authority. Secondly, the impugned order is passed in utter violation of principles of natural justice.

For the foregoing reasons, the writ petition is allowed, and the impugned order, dated 07.03.2005, passed by the first respondent, and the one, dated 17.11.2005, passed by the third respondent are set aside. It is, however, made clear that it shall be open to the first respondent to take necessary steps, duly following the procedure prescribed under law, if he is so advised. There shall be no order as to costs.

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25.01.2006

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